

107TH CONGRESS
2D SESSION

S. _____

IN THE SENATE OF THE UNITED STATES

Mr. FEINGOLD introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend the Communications Act of 1934 to facilitate an increase in programming and content on radio that is locally and independently produced, to facilitate competition in radio programming, radio advertising, and concerts, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Competition in Radio
5 and Concert Industries Act of 2002”.

6 **SEC. 2. FINDINGS; PURPOSE.**

7 (a) FINDINGS.—Congress makes the following find-
8 ings:

9 (1) Pursuant to the Telecommunications Act of
10 1996 (Public Law 104–104), the Federal Commu-

1 nications Commission eliminated national ownership
2 rules, and revised local ownership rules, for radio
3 broadcast stations.

4 (2) This deregulation of ownership rules has
5 materially altered the radio broadcast industry and
6 resulted in a concentration of ownership of radio
7 stations and a corresponding reduction in localism.
8 The number of radio station owners decreased from
9 5,100 in 1996 to 3,800 in 2001, a decrease of 25
10 percent.

11 (3) Segments of the radio, concert, and concert
12 promotion industries have also become vertically in-
13 tegrated. In some cases, radio station owners, and
14 concert promoters have common ownership, as well
15 as exclusive agreements to manage concert venues.
16 As a result, these radio station owners have the in-
17 centive and ability to favor the musical artists and
18 groups they promote.

19 (4) This could make it more difficult for non-
20 affiliated concert promoters to secure air time, for
21 nonaffiliated musical artists or groups to secure air
22 time, and for nonaffiliated radio stations to secure
23 access to musical artists or groups.

24 (5) According to a number of recent studies, in
25 the rapid consolidation of the radio, concert pro-

1 motion, and concert venue industries in the 5-year
2 period following the enactment of the Telecommuni-
3 cations Act of 1996, concert ticket prices have in-
4 creased by more than 50 percent more than such
5 prices had increased in any previous 5 year-period.

6 (6) According to some estimates, from 1991 to
7 1996, the average concert ticket price increased by
8 approximately 21 percent, compared to an increase
9 in the Consumer Price Index of about 15 percent.
10 From 1996 to 2001, the average concert ticket price
11 increased by more than 61 percent, while the Con-
12 sumer Price Index increased by 13 percent.

13 (7) There is a substantial public interest in pro-
14 moting the values embraced by the first amendment
15 to the Constitution, and the public interest, conven-
16 ience, and necessity, by increasing the presence of
17 independently-owned and locally-produced content on
18 radio.

19 (8) There is a substantial public interest in pro-
20 moting the value embraced by the first amendment
21 to the Constitution by strengthening the diversity of
22 voices provided through media such as radio.

23 (9) Pursuant to its authority and responsibility
24 to protect the public interest under the Communica-
25 tions Act of 1934, the Commission has sought to

1 promote diversity and competition in radio broad-
2 casting.

3 (10) The promotion of independently-owned and
4 locally-produced content in radio not only addresses
5 the primary objective of the Commission to guar-
6 antee adherence to the first amendment to the Con-
7 stitution, it also increases competition of audio in
8 the provision of audio programming, in radio adver-
9 tising, and in concert venue and concert promotion.

10 (11) The concentration of ownership of radio
11 stations and a corresponding reduction in localism
12 following the enactment of the Telecommunications
13 Act of 1996 has exceeded that intended by Congress
14 in enacting that Act.

15 (12) In 1995, the top 50 radio groups owned
16 8.6 percent of the total number of radio stations. By
17 2000 they owned 27.5 percent of the total number
18 of radio stations.

19 (13) In 1995, the top 50 radio groups ac-
20 counted for 43.6 percent of the total revenues going
21 to all radio stations. By 2000 that percentage had
22 increased to 62.5 percent.

23 (14) The top 10 groups account for almost 50
24 percent of all radio station industry revenues, while
25 owning 17.6 percent of all commercial radio stations.

1 (15) This consolidation has also caused some
2 radio station groups to collect alternative sources of
3 income, including establishing exclusive agreements
4 with independent promoters, establishing fees for
5 play list monitoring, and limiting radio promotion of
6 concert tours to musical artists and groups playing
7 at venues owned by such groups.

8 (16) These practices, when coupled with the in-
9 creased concentration of the ownership of radio sta-
10 tions, have the potential to reduce the diversity of
11 music and other material made available to the
12 American public over radio as stations make pro-
13 gramming decisions for reasons other than the li-
14 censee's bona fide determination whether the mate-
15 rial serves the public interest.

16 (17) Current Commission rules prohibiting pay-
17 ola predate the enactment of the Telecommuni-
18 cations Act of 1996, and the evolution of new pro-
19 motional practices, and do not directly address the
20 applicability of sections 317 and 507 of the Commu-
21 nications Act of 1934 (47 U.S.C. 317, 508) to such
22 new promotional practices. As a result, radio sta-
23 tions engaging in such practices do not make any
24 sponsorship identification announcements in connec-

1 tion with the broadcast of material which are the
2 subject of such practices.

3 (18) These types of practices are inconsistent
4 with the public interest and with the policies enun-
5 ciated in sections 317 and 507 of the Communica-
6 tions Act of 1934. In order to assure compliance
7 with these sections, the Commission should revise its
8 rules implementing those sections to prohibit these
9 practices and to facilitate the broadcast of diverse
10 radio programs while assuring that legitimate pro-
11 motional activities can continue.

12 (19) Promotion of the values embraced by the
13 first amendment to the Constitution, and the
14 strengthening of a diversity of voices provided
15 through media, such as radio, is in the public inter-
16 est.

17 (20) A broader diversity of voices through
18 media sources such as radio promotes the right of
19 the people under the first amendment to the Con-
20 stitution to receive a wide range of information.

21 (b) PURPOSE.—The purpose of this Act is to promote
22 the values embraced by the first amendment to the Con-
23 stitution, and the public interest, convenience, and neces-
24 sity, by facilitating—

1 (1) better service by radio stations to the local
2 communities they are licensed to serve, including an
3 increase in the amount of radio programming and
4 content that is produced by local and independent
5 sources;

6 (2) an increase in competition in radio pro-
7 gramming and content, radio advertising, concert
8 venues, and concert promotion; and

9 (3) more diversity in radio programming.

10 **SEC. 3. PROHIBITION ON USE OF RADIO TO REDUCE PUB-**
11 **LIC ACCESS TO DIVERSE RADIO AND CON-**
12 **CERT PROGRAMMING AND CONTENT.**

13 (a) REVOCATION OF LICENSE FOR HINDERING
14 AVAILABILITY OF INDEPENDENT, LOCAL PROGRAMMING
15 AND CONTENT.—Section 312(a) of the Communications
16 Act of 1934 (47 U.S.C. 312(a)) is amended—

17 (1) in paragraph (6), by striking “or” at the
18 end;

19 (2) in paragraph (7), by striking the period at
20 the end and inserting a semicolon; and

21 (3) by adding at the end the following new
22 paragraph:

23 “(8) for willful and repeated engagement in un-
24 fair methods of competition, unfair or deceptive acts
25 or practices, or tying the use of entities owned by

1 the licensee or permittee for the purpose of hin-
2 dering significantly, or preventing, the broadcast of
3 programming or content, including any sound re-
4 cording by a musical artist, if such programming or
5 content is produced or promoted by a person inde-
6 pendent of the licensee or permittee or the creator
7 thereof is independent of the licensee or permittee;
8 or”.

9 (b) REVOCATION OF LICENSE FOR HINDERING
10 AVAILABILITY OF CONCERTS.—That section is further
11 amended by adding at the end the following new para-
12 graph:

13 “(9) for conviction or final adjudication under
14 an antitrust law or unfair trade practice law of a
15 violation of such law regarding concert venues or
16 concert promotion.”.

17 (c) PROHIBITION.—That section is further amended
18 by adding at the end the following new subsection:

19 “(h) PROHIBITION ON HINDERING AVAILABILITY OF
20 RADIO PROGRAMMING AND CONTENT AND CONCERTS.—

21 “(1) PROHIBITION.—Under such regulations as
22 the Commission shall prescribe, it shall be unlawful
23 for any licensee or permittee to carry out an act for
24 which revocation of a license or permit is authorized
25 under paragraph (8) or (9) of subsection (a).

1 “(2) PENALTIES.—A licensee or permittee that
2 violates paragraph (1) shall be subject to such pen-
3 alties under title V as the Commission shall pre-
4 scribe in regulations.

5 “(3) CONSTRUCTION WITH LICENSE REVOCA-
6 TION AUTHORITY.—The penalties provided under
7 paragraph (2) for an act described in paragraph (1)
8 are in addition to any other action which the Com-
9 mission may take under subsection (a) with respect
10 to such act.”.

11 (d) DEFINITIONS.—Subsection (f) of that section is
12 amended by adding at the end the following new para-
13 graphs:

14 “(3) The term ‘antitrust law’ has the meaning
15 given that term in subsection (a) of the first section
16 of the Clayton Act (15 U.S.C. 12(a)).

17 “(4) The term ‘unfair trade practice law’ means
18 the Federal Trade Commission Act (15 U.S.C. 41 et
19 seq.) and include any State law similar to that
20 Act.”.

21 (e) REGULATIONS.—

22 (1) IN GENERAL.—Not later than 180 days
23 after the date of the enactment of this Act, the Fed-
24 eral Communications Commission shall prescribe
25 regulations and implement the amendments to sec-

1 tion 312 of the Communications Act of 1934 made
2 by this section.

3 (2) CONSULTATION.—The Federal Communica-
4 tions Commission shall prescribe regulations under
5 paragraph (1) in consultation with the Federal
6 Trade Commission.

7 (3) ELEMENTS.—The regulations under para-
8 graph (1) shall prohibit a licensee or permittee of a
9 radio station, or affiliate thereof, that has an attrib-
10 utable interest (as determined under section 73.3555
11 of title 47, Code of Federal Regulations) in a pro-
12 gramming entity or concert venue or concert pro-
13 motion service from—

14 (A) improperly influencing the decision of
15 the entity or service, or any musician or other
16 programming or content provider, to sell, or the
17 price, terms, or conditions of sale of, satellite
18 cable programming or content or satellite
19 broadcast programming or content to any other
20 radio station or unaffiliated concert venue or
21 concert promotion service;

22 (B) improperly influencing the decision of
23 any musician or other programming or content
24 provider to sell, or the price, terms, or condi-
25 tions of sale of, any song, work, or sound re-

1 cording, programming, concert performance, or
2 concert promotion service to any person or enti-
3 ty not affiliated with—

4 (i) the licensee or permittee;

5 (ii) an affiliate of the licensee or per-
6 mittee; or

7 (iii) an entity in which the licensee or
8 permittee has an attributable interest;

9 (C) discriminating against a musician or
10 other programming or content provider that
11 does not agree to enter into a contract or other
12 arrangement with an entity affiliated with the
13 licensee or permittee, or in which the licensee or
14 permittee has an attributable interest, that of-
15 fers concert venue or concert promotion service;

16 (D) requiring an exclusive contract or
17 other arrangement with a musician or other
18 programming or content provider that prevents
19 other radio licensees or permittees, concert pro-
20 motion entities, or concert venues from obtain-
21 ing programming or content from the musician
22 or other programming or content provider to
23 the extent that such contract or other
24 arrangement—

- 1 (i) impairs, impedes, or prevents com-
2 petition in radio programming or content,
3 concert venues, or concert promotion;
4 (ii) impairs, impedes, or prevents di-
5 versity of programming or content in local
6 radio markets;
7 (iii) is unduly long in duration; or
8 (iv) contains unreasonable renewal or
9 extension provisions.

10 (3) EXCLUSION FROM REQUIRED BIENNIAL RE-
11 VIEW.—Section 202(h) of the Telecommunications
12 Act of 1996 (Public Law 104–104; 110 Stat. 111),
13 relating to the biennial review by the Commission of
14 its ownership rules, shall not apply with respect to
15 the regulations prescribed under this section.

16 **SEC. 4. ENHANCED SCRUTINY OF FURTHER CONSOLIDA-**
17 **TION IN RADIO.**

18 (a) ENHANCED SCRUTINY.—

19 (1) IN GENERAL.—Section 309 of the Commu-
20 nications Act of 1934 (47 U.S.C. 309) is amended
21 by adding at the end the following new subsection:

22 “(m) ADDITIONAL REQUIREMENTS REGARDING
23 RADIO.—

24 “(1) HEARING ON CERTAIN APPLICATIONS.—

25 The Commission shall designate for hearing any ap-

1 plication for the grant, transfer, assignment, or re-
2 newal of a license for a commercial radio station if
3 approval of the application would result in the appli-
4 cant, or any of its stockholders, partners, members,
5 officers, or directors, owning, operating, controlling,
6 or having an attributable interest, whether directly
7 or indirectly, in radio stations that have an aggre-
8 gate national audience reach, as determined in a
9 manner comparable to the manner provided for tele-
10 vision stations under section 73.3555(e)(1) of title
11 47, Code of Federal Regulations, exceeding 60 per-
12 cent.

13 “(2) SHOWING AT HEARING.—In addition to
14 any other matters required to be shown under this
15 section, an applicant referred to in paragraph (1)
16 shall be required to show at a hearing under that
17 paragraph that the applicant—

18 “(A) with respect to all radio stations in
19 which the applicant has an attributable interest
20 at the time of application, does not—

21 “(i) improperly influence the decision
22 of any musician or other programming or
23 content provider to sell, or the price,
24 terms, or conditions of sale of, any song,
25 work, or sound recording, programming,

1 concert performance, or concert promotion
2 service to any person or entity not affili-
3 ated with—

4 “(I) the applicant;

5 “(II) an affiliate of the applicant;

6 or

7 “(III) an entity in which the ap-
8 plicant has an attributable interest;

9 “(ii) discriminate against any musi-
10 cian or other programming or content pro-
11 vider that does not agree to enter into a
12 contract or other arrangement with an en-
13 tity affiliated with the applicant, or in
14 which the applicant has an attributable in-
15 terest, that offers concert venue or concert
16 promotion service; or

17 “(iii) require any exclusive contract or
18 other arrangement with a musician or
19 other programming or content provider
20 that prevents other radio licensees or per-
21 mittees from obtaining programming or
22 content from the musician or other pro-
23 gramming or content provider; and

24 “(B) with respect to the radio station cov-
25 ered by the application, has identified and will

1 respond through appropriate programming or
2 content to the problems, needs, and interests of
3 the local market for such radio station.”.

4 (2) EFFECTIVE DATE.—Subsection (m) of sec-
5 tion 309 of the Communications Act of 1934, as
6 added by paragraph (1), shall take effect on the date
7 of the enactment of this Act, and shall apply with
8 respect to applications described by such subsection
9 that are pending with the Federal Communications
10 Commission on or after that date, regardless of the
11 number of AM or FM radio stations owned, oper-
12 ated, or controlled by the applicant concerned on
13 that date.

14 (b) LOCAL MARKET SHARE AND LOCAL MARKETING
15 AGREEMENTS.—The Federal Communications Commis-
16 sion shall prescribe regulations to prohibit the transfer or
17 assignment to operate, or the use of, a local marketing
18 agreement with respect to a commercial radio station if
19 the transfer or assignment, or such agreement, will permit
20 the applicant, or the brokers of such agreement, to own,
21 operate, or have an attributable interest in commercial
22 radio stations that have in aggregate, as of the date of
23 application therefor—

24 (1) more than 35 percent of the audience share
25 of the local market of such radio stations; or

1 (2) more than 35 percent of the radio adver-
2 tising revenue in the local market of such radio sta-
3 tions.

4 (c) LOCAL OWNERSHIP LIMITS.—

5 (1) PROHIBITION ON UPWARD REVISION OF
6 LIMITS.—The Federal Communications Commission
7 may not revise upward the limitations on multiple
8 ownership of radio stations specified in section
9 73.3555(a) of title 47, Code of Federal Regulations,
10 as of the date of the enactment of this Act.

11 (2) EXCLUSION FROM REQUIRED BIENNIAL RE-
12 VIEW.—Section 202(h) of the Telecommunications
13 Act of 1996 (Public Law 104–104; 110 Stat. 111),
14 relating to the biennial review by the Commission of
15 its ownership rules, shall not apply with respect to
16 the limitations on multiple ownership of radio sta-
17 tions referred to in paragraph (1).

18 **SEC. 5. REVIEW OF USE OF PRIVATELY-CONTROLLED AUDI-**
19 **ENCE MEASUREMENT SYSTEMS FOR DETER-**
20 **MINATION OF LOCAL MARKETS OF RADIO**
21 **STATIONS.**

22 (a) REVIEW REQUIRED.—Not later than one year
23 after the date of the enactment of this Act, the Federal
24 Communications Commission shall conduct a review of the
25 advisability of its continuing to utilize privately-controlled

1 audience measurement systems in order to determine the
2 local markets of radio stations.

3 (b) ELEMENT OF REVIEW.—As part of the review
4 under subsection (a), the Commission shall determine
5 whether or not the commercial radio industry utilizes prac-
6 tices to manipulate privately-controlled audience measure-
7 ment systems.

8 (c) ACTION AFTER REVIEW.—If the Commission de-
9 termines as a result of the review under subsection (a)
10 to continue to utilize privately-controlled audience meas-
11 urement systems in order to determine the local markets
12 of radio stations, the Commission shall prescribe in regula-
13 tions measures to adapt to changes in audience measure-
14 ment under such systems in order to ensure that audience
15 measurement by the Commission utilizing such systems is
16 consistent over time and is not subject to influence by the
17 commercial radio industry or other private parties.

18 (d) MEASUREMENT OF RURAL AREAS AND SMALL
19 MARKETS.—The Commission shall prescribe in regula-
20 tions mechanisms to measure the audiences in rural mar-
21 kets, small markets, and other markets not covered by pri-
22 vately-controlled audience measurement systems.

1 **SEC. 6. MODIFICATION OF ATTRIBUTABLE INTEREST IN**
2 **RADIO STATIONS AND LIMITATIONS ON**
3 **LOCAL MARKETING AGREEMENTS.**

4 (a) MODIFICATION OF ATTRIBUTABLE INTEREST.—

5 The Federal Communications Commission shall modify its
6 rules under section 73.3555 of title 47, Code of Federal
7 Regulations, in order to provide the following:

8 (1) That a licensee or permittee of a commer-
9 cial AM or FM radio station shall be treated as hav-
10 ing an attributable interest in an entity that supplies
11 more than 15 percent of the total weekly broadcast
12 programming hours to another licensee or permittee
13 of a commercial AM or FM radio station if—

14 (A) the licensee or permittee holds equity
15 (including all stock, whether voting or non-
16 voting and whether common or preferred) and
17 debt in such entity in excess of 33 percent of
18 total asset value of such entity, as determined
19 by taking into account the aggregate value of
20 all equity and debt of such entity; or

21 (B) the licensee or permittee holds an op-
22 tion to purchase or acquire such entity.

23 (2) That a licensee or permittee of a commer-
24 cial AM or FM radio station shall be treated as hav-
25 ing an attributable interest in another licensee or
26 permittee of a commercial AM or FM radio station

1 if an individual or entity serving the licensee or per-
2 mittee serves such other licensee or permittee in an
3 identical or similar capacity with regard to the provi-
4 sion of program content, selection of program con-
5 tent, or supervision of selection of program content
6 for such other commercial AM or FM radio station.

7 (b) REPORTS ON SPECIAL RELATIONSHIP CON-
8 TRACTS.—

9 (1) IN GENERAL.—Not later than one year
10 after the date of the enactment of this Act, the
11 Commission shall prescribe in regulations require-
12 ments that each licensee or permittee of a radio sta-
13 tion submit to the Commission a report on each spe-
14 cial relationship contract between such licensee or
15 permittee and another licensee or permittee of a
16 radio station, or any person or entity having an
17 attributional interest in such other licensee or per-
18 mittee, in the market served by such licensee or per-
19 mittee.

20 (2) SPECIAL RELATIONSHIP CONTRACT DE-
21 FINED.—In this subsection, the term “special rela-
22 tionship contract” means a contract, option, or other
23 arrangement regarding management, programming,
24 or sales, an actual or contingent financial arrange-
25 ment, ownership interest, investment, or loan be-

1 tween the parties to such contract, option, or other
2 arrangement or their immediate families.

3 (c) LIMITATION ON DURATION OF CERTAIN LOCAL
4 MARKETING AGREEMENTS.—

5 (1) IN GENERAL.—No local marketing agree-
6 ment or other agreement entered into or renewed
7 after the date of the enactment of this Act under
8 which a licensee or permittee of a commercial radio
9 station, or any person or entity having an
10 attributional interest in the commercial radio sta-
11 tion, provides more than 15 percent of the program-
12 ming or content to another commercial radio station
13 in the same market may have a term exceeding one
14 year, including any period of renewal of such agree-
15 ment.

16 (2) APPLICATION.—Paragraph (1) shall apply
17 with respect to any agreement described by that
18 paragraph that is in effect on or after the date of
19 the enactment of this Act.

20 (d) EXCLUSION FROM REQUIRED BIENNIAL RE-
21 VIEW.—Section 202(h) of the Telecommunications Act of
22 1996 (Public Law 104–104; 110 Stat. 111), relating to
23 the biennial review by the Commission of its ownership
24 rules, shall not apply with respect to any rules or require-
25 ments established by or under this section.

1 **SEC. 7. USE OF CONTROL OVER BROADCAST MATTER BY A**
2 **RADIO STATION TO EXTRACT MONEY OR ANY**
3 **OTHER VALUABLE CONSIDERATION.**

4 Not later than one year after the date of enactment
5 of this Act, the Federal Communications Commission shall
6 modify its regulations under sections 317 and 507 of the
7 Communications Act of 1934 (47 U.S.C. 317 and 508),
8 in order to prohibit the licensee of any radio station, in-
9 cluding any parent, subsidiary, or affiliated entity of such
10 licensee, from using its control over any matter broadcast
11 by such licensee to extract money or any other consider-
12 ation, whether directly or indirectly, from a record com-
13 pany, artist, concert promoter, or other entity or an agent
14 or representative thereof.

15 **SEC. 8. LIMITATION ON SUSPENSION OR WAIVER OF**
16 **RULES.**

17 (a) LIMITATION.—The Federal Communications
18 Commission may suspend or waive a rule or regulation
19 prescribed under this Act, or implementing a provision of
20 this Act, only if the Commission determines that there is
21 a compelling justification to suspend or waive the rule or
22 regulation.

23 (b) TREATMENT OF COURT DECISIONS.—The deci-
24 sion of a court to stay, reverse, or negate a rule or regula-
25 tion of the Commission referred to in subsection (a), if

1 not final or if stayed on appeal, does not constitute good
2 cause for purposes of that subsection.

3 **SEC. 9. ANNUAL REPORTS.**

4 Not later than January 31 each year, the Federal
5 Communications Commission shall submit to Congress a
6 report on the compliance of the commercial radio industry
7 during the preceding year with prohibitions on sponsorship
8 identification, payola, plugola, national and local owner-
9 ship limitations, local marketing agreements, and
10 attributional interest rules, including practices of the in-
11 dustry that have the effect of circumventing such prohibi-
12 tions.